

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

DAVID LIPNICKI, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	Civil Action No. 3:10-cv-00605
v.	§	
	§	
MERITAGE HOMES	§	
CORPORATION, ET AL.	§	(Jury Demanded)
	§	
Defendants.	§	

**PLAINTIFFS' TRIAL BRIEF REGARDING REQUEST
TO PARTICIPATE IN JURY TRIAL INNOVATION PROJECT**

Plaintiffs David Lipnicki, Donna Armstrong, Tim Gonzalez, and Kip Edwards (collectively, "Plaintiffs") file their Trial Brief Regarding Request to Participate in Jury Trial Innovation Project and respectfully show as follows:

I. OVERVIEW

In 2005, the American Bar Association launched the American Jury Project (AJP) with the goal of "improving jury comprehension during jury trials and thus increase the reliability of verdicts and public and business confidence in the system."¹ A committee of lawyers, judges, and professors in Houston were assembled by Judge Nancy Atlas to devise a pilot program to test jury innovations in Texas state and federal courts. Section C.8. of the Court's Practices and

¹ Jury Innovations Project; An Effort to Enhance Jury Trials in Texas State and Federal Courts – Pilot Program Manual, page 3.

Procedures indicates that this Honorable Court has elected to participate in the Jury Trial Innovation Project described above.

Section C.8. indicates that one or two of the following practices will be used at each trial: (1) a timing order; (2) instructing the jury on the law prior to trial; (3) allowing jurors to ask questions; and (4) allowing attorneys to make mini-summations during trial. This Court is already utilizing a timing order as “each side will have 15 hours for the examination of witnesses.” [Doc. 217]. Thus, Plaintiffs respectfully request that, as a second Jury Trial Innovation Project practice, this Court instruct the jury on the law prior to trial.

II. ARGUMENT

As explained on page 15 of the Jury Innovations Project Pilot Program Manual,

“[a]lthough detailed instructions on the law are generally given at the close of evidence or after closing arguments, it is often helpful to provide a brief introduction to the applicable law at the outset of trial. Preliminary instructions on the law orient jurors about the basic elements of the claims and defenses at issue in the case, allowing the jurors to evaluate the evidence with more focus and direction. Preliminary instructions may also reduce juror bias and reliance on stereotypes, reduce juror confusion, and improve juror understanding of the final jury charge.”

Pursuant to the suggested procedures in the Program Manual, Plaintiffs have attached to this trial brief Proposed Preliminary Substantive Jury Instructions. Although four Plaintiffs are participating in this trial, each with individual claims

against Meritage, all Plaintiffs are required to prove the same elements of their FLSA overtime claims, and the jury will determine whether or not the outside sales exemption applies to each individual Plaintiff. Thus, instructing the jury on the elements of the FLSA overtime claims and the standard for determining whether Plaintiffs were outside salespersons will greatly aid the jury in understanding the key issues in this matter from the beginning of trial through verdict. It will also aid the jury in evaluating the evidence and will hopefully improve the jurors' understanding of the final charge.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court instruct the jury on the law prior to trial using Plaintiffs' Proposed Preliminary Substantive Jury Instructions attached as Exhibit A to this trial brief.

Dated: November 5, 2014

Respectfully submitted,

/s/ Rhonda H. Wills

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CERTIFICATE OF SERVICE

I, the undersigned counsel, hereby certify that the foregoing document has been electronically filed with the Clerk of the Court by using the CM/ECF system, which will in turn send a notice of the electronic filing to all counsel of record, on this 5th day of November 2014.

/s/ Rhonda H. Wills

Rhonda H. Wills